

### **REMARKS**

By this Amendment, claims 74-80, 168, 174, and 186 have been cancelled, and claims 1, 24, 60, 93, 128, 160, 161, and 165 have been amended. Consequently, claims 1-33, 35-73, 81-126, 128-142, 160-167, 169-173, 175-185, 187, and 188 are pending in this application, with claims 1, 60, 61, 84, 93, 128, 134, 160, 161, and 165 being independent. Of those pending claims, claims 61-73, 84-92, and 134-142 have been allowed, and claims 11-15, 18, 20-22, 25, 26, 36-51, 54-59, 81-83, 102, 105-108, 111, 113-115, 118, 119, and 131-133 have been withdrawn from consideration.

As an initial matter, Applicant draws the Examiner's attention to the Information Disclosure Statement filed January 3, 2005 and respectfully requests that the Examiner consider the documents listed on the IDS Form PTO/SB/08 filed with the Information Disclosure Statement and return the initialed and signed Form with the next Office Communication to Applicant.

Applicant takes this opportunity to thank the Examiner for indicating that, in addition to allowed claims 61-73, 84-92, and 134-142, claims 165, 168, 171, 172, 174, and 186 contain allowable subject matter. In light of that indication, Applicant has amended independent claims 1, 60, and 161 to include allowable subject matter of claims 168, 174, and 186, respectively, in order to place those claims and their respective dependent claims in condition for allowance. In addition, dependent claim 165 has been rewritten in independent form to place that claim in condition for allowance.

In amending independent claim 161, Applicant cancelled the phrase "the at least one surface facing the receptacle when the removable unit is positioned on the

receptacle during loading of the application element with the product.” Despite that deletion, claim 161 should be allowable.

Each of independent claims 93 and 160 has been amended to include the subject matter of claims 174 and 186 (claims 174 and 186 recited identical subject matter) in order to place those claims and their respective dependent claims in condition for allowance. Although neither claim 174 nor claim 186 depended from claim 93 or 160, Applicant respectfully submits that inclusion of the allowable subject matter of claims 174 and 186 in independent claims 93 and 160 places claims 93 and 160 in condition for allowance.

In view of the above-mentioned amendments to the claims, claims 1-33, 35-73, 81-126, 129-142, 160-167, 169-173, 175-185, 187, and 188 should be allowable.

In the Office Action, claims 1, 3, 16, 17, 19, 23, 27, 35, and 38 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,974,981 to Bennett (“Bennett”); claims 1-4, 6-8, 16, 19, 23, 24, 30, 31, 35, 38, 52, 53, 60, 93-99, 109, 112, 116, 117, 123, 124, 160, 161, 163, 166, 170, 173, 176, 179, 180, 182, and 185 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 1,818,340 to Lemoine (“Lemoine”); claims 128-130<sup>1</sup>, 160, 161, 178, 180-184, and 187 were rejected under 35 U.S.C. § 102(b) as being anticipated by European Patent Application Publication No. 1 020 135 to Gueret (“Gueret”); and claims 1, 3-10, 16, 17, 19, 23, 24, 27, 35, 38, 52, 53, 93, 94, 96-101, 103, 104, 109, 110, 112, 116, 117, 120, 163, 166, and 167 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent

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<sup>1</sup> Applicant respectfully notes that inclusion of claims 129 and 130 in this rejection appears to have been made in error since those claims depend from independent claim 93, which was not subject to this rejection.

No. 4,974,981 to U.S. Patent No. 882,668 to Davis ("Davis"). Without necessarily acquiescing to these rejections, Applicant notes that these rejections, as applied to claims 1-33, 35-73, 81-126, 129-142, 160-167, 169-173, 175-185, 187, and 188, should not longer be applicable because, as discussed above, all of those claims recite allowable subject matter.

The only rejection outstanding in this application is the 35 U.S.C. § 102(b) rejection of claim 128 based on Gueret. As discussed below, Applicant respectfully submits that this rejection should be withdrawn.

Independent claim 128 has been amended to more clearly define the subject matter recited in that claim. Amended claim 128 recites, among other things, "a receptacle" and "a removable unit ... wherein the receptacle includes a dispensing member on a portion of the receptacle separate from a portion on which the removable unit is configured to be positioned, and wherein when the removable unit is positioned on the portion of the receptacle on which the removable unit is configured to be positioned, the dispensing member is capable of dispensing product without loading the removable unit."

In the rejection statement, the Office Action asserted that Gueret's portion 14 with cap 23 and Gueret's pump 10 allegedly correspond to the recited "removable unit" and "dispensing member," respectively, and that the pump 10 is located on a portion of the reservoir 2 "separate from a portion on which the removable unit 14 is configured to be positioned." Without accepting this assertion, Applicant respectfully submits that Gueret still does not teach or suggest the subject matter of amended claim 128 because, among other reasons, the pump 10 of Gueret is not capable of dispensing

product without loading a removable unit, when the removable unit is positioned on the portion of the receptacle on which the removable unit is configured to be positioned. That is, when the portion 14 with cap 23 is positioned on the reservoir 2, the only way the pump 10 can dispense product is by loading the portion 14 with cap 23. Therefore, “when [a] removable unit is positioned on the portion of the receptacle on which the removable unit is configured to be positioned,” the pump 10 of Gueret is incapable of “dispensing product without loading the removable unit,” as recited in amended claim 128. For at least this reason, independent claim 128 is patentably distinguishable from Gueret. Accordingly, Applicant respectfully requests reconsideration and withdrawal of this rejection under 35 U.S.C. § 102(b) based on Gueret.

Since generic claims 1, 60, and 93 are allowable, Applicant respectfully requests that claims 11-15, 18, 20-22, 25, 26, 36-51, and 54-59 (which depend from allowable independent claim 1), claims 81-83 (which depend from allowable independent claim 60), and claims 102, 105-108, 111, 113-115, 118, 119, and 131-133 (which depend from allowable independent claim 93), all of which had been withdrawn from consideration in view of an election of species requirement, be rejoined in this application and be allowed at least by virtue of their dependency from allowable independent claims 1, 60, and 93.

Applicant respectfully requests reconsideration of this application, withdrawal of all the outstanding rejections, and allowance of all pending claims.

The Office Action contains a number of statements and characterizations regarding the claims and the related art. Applicant declines to subscribe automatically

to any statement or characterization in the Office Action, regardless of whether it is addressed above.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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